IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08-06-2007

CORAM:

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

WRIT PETITION NO.4070 OF 1998

K.Raju .. Petitioner

Versus

1.The Chairman & Managing Director
Tamil Nadu Small Industries Corporation
Limited, Chennai - 600 032

2.The General Manager, TANSI
Chennai - 32

3.Assistant Manager (Administration)
TANSI, Chennai - 600 032

4.Superintendent, TANSI Engineering Works
Tiruppachur, Kadambathur via
Chengalpattu District. .. Respondents

For Petitioner :: Mrs.M.Sahira Banu for
Mr.M.Ravi, Mrs.Priya Ravi
For Respondents :: Mr.G.Kalyana Sundaram

Prayer amended as per order dated 5.1.2007 in W.P.M.P.No. 10007 / 05 in w.P.4070/98.

Prayer: Writ Petition is filed under Article 226 of The Constitution of India for the relief of issuance of a writ of certiorarified mandamus to call for the records of the fourth respondent in (1) Rc.NO.2226/SK/75 dated 23.4.1986; (2) Rc.NO.2013/SK/77 dated 28.4.1986 and (3) Rc.No.2686/SK/77 and that of the first respondent in Memo Rc.No.35818/EGI/92 dated 23.10.1997, quash the same and issue consequential directions to the respondents herein to refund the sum of Rs.30,413.70, recovered or withheld from the retirement benefits of the petitioner immediately.

ORDER

Originally, this writ petition was filed by the petitioner challenging the order of the third respondent - Assistant Manager (Administration), Tamil Nadu Small Industries Corporation Limited dated 23.10.1997 under which the third respondent has rejected the claim made by the petitioner in his representation dated 12.2.1996 requesting for refund of a sum of Rs.30,413.70ps.

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2. It is seen that subsequently, by way of amendment, the petitioner was permitted to challenge the order dated 23.4.1986 of the fourth respondent in and by which certain charges have been framed against the petitioner. The charge was relating to the petitioner while working as in-charge of stores in Tansi Engineering Works, Tirupachur, there was some shortage found and on that basis, four charges have been framed including the failure and negligence on the part of the petitioner in maintaining proper accounts and also discrepancies apart from the shortages. By two subsequent orders dated 28.4.1986, the fourth respondent having found that even though on enquiry the disciplinary authority was of the view that the petitioner is liable for severe punishment, took lenient view and ordered recovery of a sum of Rs.11,213.50ps and Rs.10,374.74 respectively. equivalent to the value of unsettled portion of shortages pointed out by the stock verification officer I, Guindy, in the course of stock verification taken.

3. A perusal of the said orders show that the petitioner has been given sufficient opportunity to peruse the records and in spite of the same, the petitioner has not chosen to avail the opportunity. It is ten years after the said order passed by the fourth respondent the petitioner has made a representation on 12.2.1996 for refund of the amount of Rs.30,413.70ps stated to have been deducted from the arrears payable to the petitioner. It is also not in dispute that in the mean time the petitioner has opted for voluntary retirement and considering the application made by the petitioner on 31.3.1993, the first respondent by his proceedings dated 6.3.1995 has accepted the request of voluntary retirement and relieved the petitioner from service on the Afternoon of 15.3.1995. The relieving order specifically states in paragraph No.4 as follows:

> "The payment will be made in full and final settlement of the voluntary retirement scheme benefits payable to him after deduction of all the dues recoverable from him."

3. Admitting the said contents only, the petitioner got himself relieved on opting for voluntary retirement. It is also not in dispute that pursuant to the relieving of the petitioner, all the monetary dues due to the petitioner have been settled, of course, by deducting the amount due as per the earlier orders dated 28.4.1986.

4. It is in view of the said factual position, the third respondent has rightly rejected the claim of the petitioner for refund of the sum of Rs.30,413.70ps. In such factual situation, the contention raised on behalf of the petitioner that the charges framed against the petitioner have not been completed and there is no settlement of dispute which has been raised in respect of the shortages and in such circumstances, the deduction

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from the retirement benefits of the petitioner is arbitrary, has no basis.

5. I have stated earlier that the petitioner having accepted the recovery of the amount by the respondent only, has opted for voluntary retirement and after having been relieved from the service, and having received all the benefits, it is certainly not open to the petitioner to make a claim of refund of the amount, and the petitioner cannot be expected to blow hot and cold.

6. For the foregoing reasons, the writ petition fails and the same is dismissed. However, there is no order as to costs. Consequently, the connected W.P.M.P.No.10008 of 2005 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

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1 cc to Mr.M.Ravi, Advocate, Sr. 33213

W.P.NO.4070 of 1998

MJ (CO)
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